

# RECLAMATION

*Managing Water in the West*

FINDING OF NO SIGNIFICANT IMPACT

## **Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2018-2020**

FONSI-17-021



U.S. Department of the Interior  
Bureau of Reclamation  
South-Central California Area Office

February 2018

## **Mission Statements**

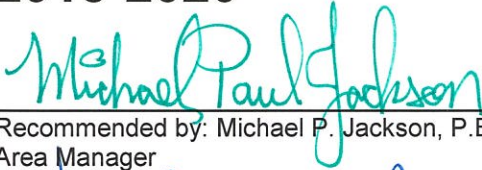
The Department of the Interior protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

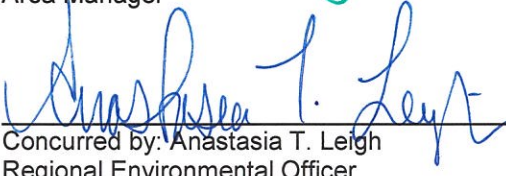
**BUREAU OF RECLAMATION**  
**South-Central California Area Office, Fresno, California**

**FONSI-17-021**

**Central Valley Project Interim Renewal  
Contracts for Westlands Water District,  
Santa Clara Valley Water District, and  
Pajaro Valley Water Management Agency  
2018-2020**

  
\_\_\_\_\_  
Recommended by: Michael P. Jackson, P.E.  
Area Manager

2/28/2018  
Date

  
\_\_\_\_\_  
Concurred by: Anastasia T. Leigh  
Regional Environmental Officer

2/28/2018  
Date

  
\_\_\_\_\_  
Approved by: David Murillo  
Regional Director

2/28/2018  
Date



## Introduction

In accordance with Section 3404(c) of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) proposes to execute six interim renewal contracts beginning March 1, 2018 (Table 1). These six interim renewal contracts would be renewed for a two-year period from March 1, 2018 through February 29, 2020. In the event a new long-term renewal contract for water service is executed, the interim renewal contract then-in-effect would be superseded by the long-term renewal contract.

Table 1 Contractors, Current Contracts, and Existing Contract Amounts

Contractor	Contract Number	Contract Quantity (acre-feet per year)
Pajaro Valley Water Management Agency, Santa Clara Valley Water District, and Westlands Water District Distribution District #1 (3-way assignment from Mercy Springs Water District)	14-06-200-3365A-IR15-B	6,260
Westlands Water District	14-06-200-495A-IR5	1,150,000
Westlands Water District Distribution District #1 (full assignment from Broadview Water District)	14-06-200-8092-IR15	27,000
Westlands Water District Distribution District #1 (full assignment from Centinella Water District)	7-07-20-W0055-IR15-B	2,500
Westlands Water District Distribution District #2 (partial assignment from Mercy Springs Water District)	14-06-200-3365A-IR15-C	4,198
Westlands Water District Distribution District #1 (full assignment from Widren Water District)	14-06-200-8018-IR15-B	2,990

Reclamation prepared Environmental Assessment (EA)-17-021, *Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2018-2020*, in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, to consider potential impacts of issuing a two-year renewal contract. The EA is tiered to the Central Valley Project Improvement Act (CVPIA) Programmatic Environmental Impact Statement (PEIS), October 1999. This FONSI is supported by EA-17-021, which is incorporated by reference.

## Background

Interim renewal contracts have been and continue to be executed pursuant to the CVPIA to provide a bridge between the expiration of the original long-term water service contracts and the execution of new long-term water service contracts. The interim renewal contracts reflect current Reclamation law, including modifications resulting from the Reclamation Reform Act and applicable CVPIA requirements. The initial interim renewal contracts were negotiated beginning in 1994 for contractors whose long-term renewal contracts were expiring, with an initial interim period not to exceed three years in length, and for subsequent renewals for periods of two years or less to provide continued water service. Many of the provisions from the interim

renewal contracts were assumed to be part of the contract renewal provisions in the description of the PEIS Preferred Alternative.

## **Alternatives Considered**

### **No Action**

Under the No Action alternative, Reclamation would not renew the contracts listed in Table 1. Reclamation would continue to pursue execution of long-term renewal contracts, as mandated by Section 3404(c) of the CVPIA. However, until such time as the environmental documentation was completed for the long-term contracts, there would be no contractual mechanism for Reclamation to deliver up to 1,192,948 acre-feet (AF) per year of CVP water to Westlands Water District (Westlands) or up to 6,260 AF to Santa Clara Valley Water District (Santa Clara). Both Westlands and Santa Clara have other contracts or contract assignments for CVP water that would continue as described in Section 2.1 of EA-17-021.

### **Proposed Action**

Under the Proposed Action, Westlands would continue to receive up to 1,192,948 AF per year and Santa Clara would continue to receive up to 6,260 AF per year of CVP water pursuant to the interim renewal contracts listed in Table 1.

### **Environmental Commitments**

Reclamation and the contractors listed in Table 1 shall implement the environmental protection measures included in Table 2 of EA-17-021. Environmental consequences for resource areas assume the measures specified will be fully implemented.

## **Comments on the EA**

Reclamation provided the public with an opportunity to comment on the Draft FONSI and Draft EA between November 28, 2017 and December 27, 2017. No comments were received during the public comment period. However, three late comment letters were received from the Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, Inc., Institute for Fisheries Resources, North Coast Rivers Alliance, Center for Biological Diversity, Planning and Conservation League, Center for Food Safety, Environmental Water Caucus, Sierra Club California, Institute for Fisheries Resources, and Southern California Watershed Alliance.

Two of the comment letters do not address specific comments on the analysis in EA-17-021 but generally asserts that "Reclamation must allow public review and comment on FWS' biological opinions regarding interim contract renewal" and that "Reclamation has prevented appropriate public comment on the actions Reclamation proposes to take" because Reclamation "failed to make available current biological opinions prepared by the United States Fish and Wildlife Service ("FWS") addressing the impacts of the IRCs on species listed under the Endangered Species Act ("ESA")". As a matter of process, there is no requirement to share ESA consultation documents with the public prior to preparing NEPA documentation; however, Reclamation provided a discussion of the effects to ESA listed species in the EA, and that information was the

same information used to consult with the FWS. As the letter indicates, Reclamation is required to ensure its actions do not jeopardize the continued existence of a species, and through consultation with the FWS has done so for this project. The concurrence memorandum received from the FWS is included as Appendix E of EA-17-021.

The third comment letter asserts that the EA violates NEPA for the following reasons: (1) the EA “fails to satisfy” the Ninth Circuit Court of Appeals decision in *Pacific Coast Federation of Fishermen’s Associations v. United States Department of the Interior* (“PCFFA”), 655 Fed. Appx. 595, 598 (9th Cir. 2016), (2) the EA “improperly limits the study area to the contractors’ service areas”, (3) the EA’s “impacts analysis is inadequate” on listed species, global warming, and cumulative impacts, (4) the EA’s “reliance on outside documents is improper” and therefore requires an EIS. Below is a discussion of the substantive issues raised regarding the analysis and how it was used in Reclamation’s decision.

### **Failure to comply with PCFFA**

Reclamation disagrees that EA-17-021 fails to comply with the Ninth Circuit Court’s decision in *PCFFA*. As required in the Ninth Circuit’s decision and noted in Section 1 of EA-17-021, Reclamation prepared EA-17-021 to include a non-contract renewal No Action Alternative and considered a reduced contract quantity alternative based on an updated water needs assessment consistent with the Ninth Circuit Court determination.

### **Limitation of the Study Area to the Contractor’s Service Areas**

EA-17-021 tiers off the CVPIA PEIS to evaluate potential site-specific environmental impacts of renewing six interim water service contracts. The CVPIA PEIS provided a programmatic evaluation of the impacts of implementing the CVPIA. Four alternatives, 17 supplemental analyses, the Preferred Alternative, and a No Action Alternative were evaluated in the PEIS. In addition, the PEIS analyzed the region-wide and cumulative impacts of the CVPIA including the renewal of CVP water service contracts. The diversion of water for delivery under the interim contracts is an on-going action and the current conditions of that diversion are discussed in the PEIS.

As described in Section 1.2 of EA-17-021, the purpose of the Proposed Action is to execute six interim renewal contracts in order to extend the term of the contractors’ existing interim renewal contracts for two years, beginning March 1, 2018 and ending February 29, 2020. Execution of these six interim renewal contracts is needed to continue delivery of CVP water to these contractors, and to further implement CVPIA Section 3404(c), until their new long-term renewal contract can be executed.

Additionally, on January 11, 2016, Reclamation issued a ROD (Reclamation 2016) addressing the environmental effects of implementing reasonable and prudent alternatives (RPAs) affecting the CVP/State Water Project (SWP) long-term operations (LTO). As the proposed execution of interim renewal contracts is administrative in nature and does not affect the operations of the CVP or SWP, EA-17-021 only covers the site specific environmental analysis of issuing the proposed interim renewal contracts over a two year period.

Further, the Ninth Circuit found that the Plaintiff’s contention “that the EA’s geographic scope was improperly limited to the delivery areas and should have considered the effects, including

cumulative effects, of interim contract renewal on the California River Delta, the source of the water, and on the Delta's fish and other wildlife...lacks merit because the EA was tiered off of the PEIS, which addressed Central Valley Project-wide effects of long term contract renewal" and further "In light of Reclamation's obligation to conduct a more comprehensive analysis in the PEIS, it would be impractical to require the agency to trace the incremental effects of each two-year water service contract on the Delta and all Central Valley Project waters" (Case: 14-15514, 07/25/2016, pg 10).

### **Inadequate Impacts Analysis**

As mentioned above, EA-17-021 tiers off the CVPIA PEIS to evaluate potential site-specific environmental impacts of renewing these six interim water service contracts. The CVPIA PEIS analyzed the region-wide and cumulative impacts of implementing the CVPIA including the renewal of CVP water service contracts. The diversion of water for delivery under the interim contracts is an on-going action and the current conditions of that diversion, including potential impacts to listed and non-listed species related to the amount of water available for contract deliveries CVP-wide, were analyzed in the CVPIA PEIS.

Further, commensurate with the extent of the Proposed Action (a two-year contract period) and using a "temporal scope that is grounded in the concept of reasonable foreseeability", Reclamation reviewed the potential effects of the Proposed Action (a two year contract renewal period) on global climate change and the potential impacts of global climate change on the Proposed Action. Climate change is incremental and the consequences of climate change occurs over the long-term. During the limited, short-term period, of the proposed two year interim renewal contracts, there will not be any significant, measurable environmental changes to the CVP due to climate change. Long-term considerations about the effects of and impacts on climate change are considered in the EA as described in Table 3 of EA-17-021.

As the proposed execution of interim renewal contracts is administrative in nature and does not affect the operations of the CVP or SWP, EA-17-021 covers the site specific environmental analysis of issuing the proposed interim renewal contracts over a two year period.

### **Improper Reliance on Outside Documents**

Reclamation followed the same process for incorporating outside documents in an EIS pursuant to 40 C.F.R. section 1508.21. There are no prohibitions in the regulations of doing this for EAs.

Reclamation has considered every comment in the late comment letters. No additional information was provided that changed the analysis contained in EA-17-021.

## **Findings**

In accordance with NEPA, Reclamation determined that the approval of the Proposed Action is not a major federal action that will significantly affect the quality of the human environment; consequently, an environmental impact statement is not required.

The following reasons are why the impacts from the proposed action are not significant:



1. The proposed action will not significantly affect public health or safety (40 CFR 1508.27(b)(2)).
2. The proposed action will not significantly affect natural resources and unique geographical characteristics such as proximity to historic or cultural resources; parks, recreation, and refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order (EO) 11990); flood plains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas (40 CFR 1508.27(b)(3) and 43 CFR 46.215(b)).
3. There is no potential for the effects to be considered highly controversial (40 CFR 1508.27(b)(4)).
4. The proposed action will not have possible effects on the human environment that are highly uncertain or involve unique or unknown risks (40 CFR 1508.27(b)(5)).
5. The proposed action will neither establish a precedent for future actions with significant effects nor represent a decision in principle about a future consideration (40 CFR 1508.27(b)(6)).
6. The proposed action will not have cumulatively significant impacts (40 CFR 1508.27(b)(7)).
7. The proposed action will not significantly affect historic properties (40 CFR 1508.27(b)(8)).
8. The proposed action will not significantly affect listed or proposed threatened or endangered species, or its habitat that has been determined to be critical under the Endangered Species Act of 1973 (40 CFR 1508.27(b)(9)).
9. The proposed action will not threaten a violation of Federal, State, tribal or local law or requirements imposed for the protection of the environment (40 CFR 1508.27(b)(10)).
10. The proposed action will not affect any Indian Trust Assets (512 DM 2, Policy Memorandum dated December 15, 1993).
11. Implementing the proposed action will not disproportionately affect minorities or low-income populations and communities (EO 12898).
12. The proposed action will not limit access to, and ceremonial use of, Indian sacred sites on Federal lands by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (EO 13007 and 512 DM 3).